

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION  
MINUTES OF MEETING, Public Session

April 13, 2006

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 9:50 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Sheridan Downey, Phil Blair, and Ray Remy were present. Commissioner Gene Huguenin was unable to attend.

**Item #1. Public Comment.**

There was none.

**Consent Items #2-11.**

Chairman Randolph made a change to the February 16 2006, meeting minutes. The minutes reflect that Commissioner Remy was ill and that is incorrect. Commissioner Remy had a death in the family and was unable to attend.

Commissioner Remy moved to approve the following items in unison:

**Item #2. Approval of the March 14, 2006, Commission meeting minutes.**

**Item #3. In the Matter of Kevin Shelley, FPPC No. 04/575 (1 count).**

**Item #4. In the Matter of Robert Good, FPPC No. 05/743 (2 counts).**

**Item #5. In the Matter of Physicians for the Group Practice of Medicine and Pauline Fox, FPPC No. 05/529 (1 count).**

**Item #6. In the Matter of Priya Mathur and Friends of Priya Mathur, FPPC No. 03/296 (3 counts).**

**Item #7. In the Matter of Lloyd Levine and Lloyd Levine for Assembly, FPPC No. 04/651 (4 counts).**

**Item #8. In the Matter of Larry Levine and Jennifer Levine, FPPC No. 04/651 (1 count).**

**Item #9. In the Matter of NEC Technologies, Inc., FPPC No. 02/318 (9 counts).**

**Item #10. Failure to Timely File Late Contribution Reports – Proactive Program.**

**a. In the Matter of Law Offices of Masry & Vititoe, FPPC No. 05/706 (1 count).**

**Item #11. Failure to Timely File Major Donor Campaign Statements.**

- a. In the Matter of Cendant Corporation, FPPC No. 06/082 (1 count).**
- b. In the Matter of Avis Rent A Car System, Inc., FPPC No. 06/083 (2 counts).**

Commissioner Downey seconded the motion. Commissioners Downey, Blair, Remy, and Chairman Randolph supported the motion, which carried a 4-0 vote.

**ACTION ITEMS**

**Item #12. *In re Pirayou* Opinion Request (O-06-016).**

Andy Rockas, Legal Counsel, addressed the Commission with a response to the request for a draft of a potential opinion that would grant the relief sought by former Assemblymember Ellen Corbett and her campaign committees. The requestor is represented by her attorney, Mr. Ash Pirayou. At the March 14, 2006, meeting the Legal Division presented a memorandum analyzing issues regarding the application of section 89519 of the Act and the permissible uses of surplus campaign funds. Discussion of these issues was triggered when counsel for Ms. Corbett, who is running for State Senate, submitted a request for opinion earlier this year on behalf of herself and her committees. After discussion, the four Commissioners present at the March 14, 2006, meeting directed legal division staff, by a 3-1 vote, to draft a proposed opinion granting the relief requested. The request is that Ms. Corbett be permitted to transfer approximately \$80,000 contained in an assembly account to a senate account, even though such money became surplus campaign funds, a result of Ms. Corbett's treasurer's gross negligence. The draft presented, which is attached to the current agenda packet, was crafted in light of the comments of the Commissioners made at the March 14, 2006, meeting. At today's meeting, the Commission will consider whether to adopt that proposed opinion.

Chairman Randolph asked for any comments from the Commission.

There were none.

Chairman Randolph asked for any comments from the requestor.

There were none.

Chairman Randolph asked for any public comment.

There was none.

Chairman Randolph explained that this decision has been one of the most difficult that the Commission has had to make in a long time. After reading through every opinion this Commission has issued, there are no other opinions in which the decision turned on the question

of fairness. It is concerning that the opinion has to be so narrow that it does not address any overriding principle, other than that the result simply does not seem fair. Fairness is an important goal in crafting rules of general applicability. The problem is when such a specific statutory provision is concerned it may not make sense not to follow it because the result is not fair. An example of this from the conflict of interest context is that someone is prohibited from voting on a project if that person has an economic interest in that project, even if that person has no bias. That person is essentially removed from that decision making process based on the assumption that there may be some bias. Arguably, that result is unfair. However, it is part of a statutory scheme in which there is a structure that must be followed. Sometimes that may have an unfair result. There does not seem to be any precedent where fairness was a valid reason to grant relief, other than the *Miller* advice letter and those preceding it, but having read through that letter, that may not have been correct either.

Chairman Randolph explained that if the Commission decides not to adopt this opinion, the result will actually seem even more unfair to the candidate because an extra month has been lost in having the opinion drafted. However, this just does not seem to be the right decision for this Commission and thirty years from now when some other Commission is looking back through old opinions, this may not be a proper one for that Commission to be looking back on.

Commissioner Remy said that having not been present at the last meeting he had not had an opportunity to express a point of view. Having listened to the tapes of the meeting, the Commissioner was impressed with staff's concern that the Commission may be opening itself up to certain actions where any elected official who makes a mistake can blame a treasurer and that treasurer will sign an affidavit admitting fault. It would be difficult for the Commission to separate that particular set of actions from these. It did seem that Ms. Corbett did everything within her power to try and have the money transferred, and indeed, her hands appear to be clean. However, the concern is that if the Commission adopted this opinion while insisting it was not a precedent, it may still be cited in future actions. Commissioner Remy explained that he was somewhat persuaded in leaning toward Ms. Corbett's petition because, as it is written in the draft opinion, it says, "Thus it has long been accepted that the Commission is not shackled by statutes that can only be read and applied with a wooden literalism that permits no appeal," therefore, it seems that the Commission does have some capacity to take a look at individual issues. Commissioner Huguenin's comment at the last meeting that the Commission can act, not as a court of law, but as a court of equity is of interest because the question is whether the Commission is pursuing something that is equitable to the individual. Regarding the opinion, if the Commission goes forward and approves the draft, while in this case the word of the treasurer and the affidavit may suffice, in the future if there is not a paper trail that documents the actions prior to the expiration date, this opinion here will not be valid because a clear indication of record will be required. That sort of language should be included in any opinion adopted so that in the future the Commission is able to close the door on any cases that can not produce more than just an affidavit. It seems that the Commission ought to act in the area of equity however, unless the opinion contains something more definitive, it is difficult to support.

Commissioner Downey commented that no other decision that has come to the Commission has required more of his time in between meetings thinking about what the appropriate response should be. Having reviewed the draft opinion, it is pleasing that the *Miller* advice letter, which is

not precedent, was not used. At the last meeting, the initial concern was of having some very clear statutes, which the requestor acknowledged. Both the statute and an earlier version of this Commission say quite directly that if a candidate will be using campaign funds in a subsequent election, they must be transferred prior to the date that candidate leaves office. The question of how to get around that or find an exception, in this case, is ultimately based on reasonable reliance upon a trusted treasurer who made a mistake. That scenario is very familiar to Enforcement, however, joint and several liability ensues even though a candidate might be as innocent as Ms. Corbett is and with equally clean hands. On the last page of the draft opinion are three somewhat bizarre concluding paragraphs which are an obvious effort to narrow the scope and application of this opinion letter. This opinion letter is precedent and may be used. It is, therefore, a good deal more important to the Commission than an advice letter is. Despite the efforts of staff to narrow the opinion as much as possible, is not narrow. A treasurer, accountant, or lawyer representing candidates will not be able to resist using this draft opinion letter, were it adopted, as a way of even further mitigated, if not absolving, innocent candidates from the misdeeds of their treasurers, lawyers, or other counselors. The final paragraph directs staff to be very careful if a similar scenario comes along in the future and to get information to the Executive Director as soon as possible without issuing any advice. Commissioner Downey wondered if that direction had ever appeared in an opinion letter before.

Chairman Randolph replied that having read them all, it has not.

Commissioner Downey said that the Commission's hands are tied by the Legislature and the particular facts, although unfortunate, are not the sort of facts that allow the Commission to skirt the prior decisions of this Commission. The intent of the statute fixing the date by which the transfer must be made is going to be offended. Assemblywoman Corbett did want to move the funds to her upcoming senatorial campaign, however, the statute limits the amount of money that can be kept in reserve for political activities and specifies a date by which the decision must be made.

Commissioner Blair said that the Commission has an obligation to treat each issue as fairly as it can and in the strict definition of following every rule and law that is made, if a situation arises where there is unfairness to a candidate, a community, or an entity, there needs to be an exception vehicle. Evidently, this Commission is that vehicle. The Commissioner explained that he cannot support treating a candidate unfairly when the Commission agrees that the candidate has done everything possible to seek compliance with the law out of fear that it may be precedent setting. If there are other situations in the future where one of the Commission's rules is treating someone unfairly, then that rule needs to be addressed to confirm that the law is the way it should be or know that occasionally there need to be exceptions made in cases where a candidate has done everything possible to comply. Commissioner Blair stated that he will support the request.

Ash Pirayou, of Pirayou Law Offices, addressed the Commission on behalf of Ms. Corbett and commended staff on the draft opinion being written so narrowly because it is very difficult to take such a narrow opinion and apply to another case without having the exact same facts as those in this case, where there are clean hands, a candidate that took certain steps, and affidavits that were signed under the penalty of perjury. It will be very difficult for any treasurer or

political lawyer to come before this Commission, simply hold the letter up, and expect relief to be granted. There is a tremendous threshold that must clear before this relief can be granted and in this case, that threshold has been met.

Commissioner Downey asked what the outcome would be if the error had been discovered a week after the transfer had been made past the deadline. Since the treasurer thought there was another ninety days left before the deadline, the transfer could have been made and an enforcement action would have been brought. Would it be appropriate for both the candidate and the treasurer to be subjected to administrative enforcement procedure?

Mr. Pirayou answered that if the candidate had instructed the treasurer to make the transfer, knowing the deadline had passed, there would be no way that candidate would have a case.

Commissioner Downey explained that the question was what if both the treasurer and the candidate truly had not known the deadline and had transferred the money thinking that they were within the law? Two questions arise. One is whether there would be any defense to the enforcement action as to the candidate who was not aware of the law? And secondly, could the Commission use this opinion to ratify the transfer, which is what is being asked of the Commission today?

Mr. Pirayou replied that, although it is not the same fact pattern, this opinion could not absolve that candidate or treasurer from responsibility.

Commissioner Downey reiterated that the question being asked has all the same facts, including ignorance of the law on both the candidate's and treasurer's part, and therefore, ignorant of the improper transfer. There are still clean hands.

Chairman Randolph asked if, in Commissioner Downey's hypothetical situation, the candidate and treasurer are ignorant of the law or the improper transfer.

Commissioner Downey replied that it would not matter as long as the candidate thinks the transfer is proper upon taking the advice of the treasurer. Sometimes treasurers make mistakes.

Chairman Randolph gave the scenario of a deadline to transfer funds being June 1<sup>st</sup> and the treasurer thinks the deadline is August 1<sup>st</sup>. The treasurer makes the transfer on July 1<sup>st</sup> thinking it is within the deadline. The candidate thinks the deadline is August 1<sup>st</sup> as well, having relied on the treasurer having accurate information. Enforcement becomes aware of the improper transfer and brings an action against the candidate. In that case, could that candidate rely on this opinion and claim ignorance of the law, and expect no violation or fine because it would be unfair?

Mr. Pirayou replied that if a candidate and a treasurer do not know the rules or misunderstands the rules and no other steps are taken to get the correct information prior to making the transfer, once the transfer is made and an Enforcement action is brought, the candidate will lose the money. Regarding the Enforcement action, ignorance of the law is no excuse but it is a mitigation. No lawyer in this case could come to the Commission, hold up this opinion, claim

the cases are the same, and expect to have the same outcome as the opinion. A judge would say that the facts in the opinion are different because the candidate in that case sought permission prior to making the transfer. There is a level of trust that a public judicial organization such as this one has to have for future Commissions and staff. This opinion may never be used again by anyone else because it contains a set of perfect facts. Hypothetically, if one case were to come every ten years or so, the future Commission could decide that case on its own facts and circumstances, and a political lawyer could not use this opinion as a reason that every other case like it should get the same ruling. The Commission has the power to decide the outcome of each case individually.

Chairman Randolph said that a broader issue of concern is that in reading through the opinion, there does not seem to be an overriding principle that the Commission is following other than it is not fair that this candidate is stuck in this situation. With a statutory as specific as the Commission's, the reason of fairness is not enough to override it.

Mr. Pirayou referred the Commission to page 7, paragraph 2, of the draft opinion. "In the instant case, we find that the candidate's request is not inconsistent with the overall purposes of the surplus finds statute to prevent candidates from using old funds to finance future campaigns. Here, the candidate's expressed desire to use the Assembly Committee funds for her Senate race was known and her intention to abide by the letter of the law is shown by affirmative acts taken by the candidate or her staff." This opinion does have an underlying tone that the purpose of the Act is furthered by this very narrow opinion. The example is that these funds are exclusively going to be used for voter outreach and the last discussion we had on the purposes of the Act included that one of the purposes has to be the ability to set the finance mechanism with the reporting rules to communicate with the voter. In terms of the Commission being uncomfortable with having nothing more in the opinion than the concept of fairness, the opinion does an excellent job of going beyond that to point out in different places that these funds are going to be used for voter education and not for any other purpose. The purposes of the Act would be achieved by adopting this opinion.

Commissioner Blair stated that a deciding factor was on page 7 of the draft opinion, which said that the candidate was diligent in attempting to seek compliance with the law. That seemed to wipe away a lot of the other issues of negligence because the Commission cannot ask much more than that of candidates when a case comes up for consideration. The way in which the funds are going to be use is irrelevant.

Chairman Randolph added that the reality is that the funds can be used for anything that is lawful within the personal use statutes. The Commission cannot specify that they be used for voter outreach.

Mr. Pirayou responded that Ms. Corbett stated that voter outreach would be the use of the funds. Ms. Corbett has no other use of the funds.

Commissioner Remy said that a fundamental issue is whether the Commission has the capacity, as well as the responsibility, to be able to exercise independent judgment when there is an equity issue involved. It is important, if the Commission does have that capacity and responsibility, to

decide if this case is one in which the Commission should do so. This is an example where sincere efforts were taken, although a hard paper trail would be preferred instead of just testimony, and this is an issue where the Commission should venture.

Mr. Rockas responded to the question of the equity powers of the Commission. Due to the nature of the way in which these committee meetings occur, staff is placed in a position of scrivener of a proposed opinion that the Commission had requested, which was drafted through the process in the Legal Division. There is much advocacy on the side of why the opinion is good. If the Commission is interested, there is information to share in which staff could also support the requestor's side.

Commissioner Downey replied that staff gave the staff's side to the Commission at the previous meeting in the staff recommendation.

Chairman Randolph asked if staff had anything new that had not already been presented.

Mr. Rockas replied that since the draft opinion did not exist at the last meeting, there are specific comments have been made in response to that.

Luisa Menchaca, General Counsel, added that what the Commission has before it as the draft opinion is what staff believes is the best argument with respect to the Commission's powers and abilities to undertake the action that it would like to take. On the issue that the Chairman raised regarding the draft opinion not addressing some of the fairness issues, that is because if the issue of fairness is discussed, then the issue of the Commission's authority to grant equitable relief. On that point, there has not been any clear case law found that would indicate that an administrative agency such as this, which does have quasi-judicial and quasi-administrative powers, can appropriately grant that kind of relief.

Chairman Randolph responded that it does not seem to be a question of the Commission's overall authority because if it were decided that the Commission does not have the authority to grant the relief in this particular situation, then it seems that it would also be saying that the Commission does have the authority to grant the relief in the advice letter.

Ms. Menchaca replied that the Chairman's statement is true.

Chairman Randolph continued that it is not clear the issue turns on the Commission's authority necessarily. It seems that the issue turns on the possibility that the Commission is taking a very clear provision and not following it because it is not fair in this case. Voter outreach does not necessarily further the purposes of the Act, even though it may not conflict with the purposes of the Act.

Mr. Pirayou added that the key point is on page 5 of the draft opinion regarding the section of Proposition 73 that says "No newsletter or other mass mailing shall be sent at public expense." The opinion talks about that language being very clear and that the result of that is that mailers and pamphlets are prohibited. The Commission has taken that strict language, gone through its regulatory process, crafted regulations that were then subsequently challenged and upheld.

Commissioner Remy's comment about the exercising of the independent judgment of the Commission is one that needs to be emphasized because it can be exercised with this particular set of facts and the very narrow opinion. The next time a case comes before the Commission, that judgment can be exercised and a different result can occur. The set of facts here, including the clean hands, show that the Commission has the ability to do this. The purposes of the Act are furthered and the fact that the opinion is narrow is very important. Commissioner Remy's comment about having a paper trail is very important point. Respectfully, because we are sixty days away from the election, it would be suggested that perhaps that could be a process that staff could be directed to propose regulations that craft what kind of paper trail would be necessary. Due to the fact that the election is so close, it would be greatly appreciated if the language of the draft could be decided today. To be deferred for another month would be problematic for Ms. Corbett.

Chairman Randolph agreed that this issue needs to be resolved today and if a paragraph needs to be added to the opinion, it can be drafted now.

Chairman Randolph asked if Ms. Corbett wanted to speak.

Ms. Corbett praised Mr. Pirayou for doing a wonderful job and added that this was not a situation where there was no action taken to attempt to prevent the treasurer's negligence. Ms. Corbett stated that several specific requests had been made of the treasurer to transfer the funds.

Commissioner Downey asked Ms. Corbett if she had known the deadline to make the transfer.

Ms. Corbett replied that she did not know the deadline, however, she knew around when it was and that is why she had been asking the treasurer way in advance about the transfer. The treasurer was in control of all the finance records and, therefore, the transfer could not be made by anyone else.

Chairman Randolph said that the Commission is confronted with difficult facts and would like to provide a good result.

Commissioner Blair made a motion to move adoption to the draft opinion.

Commissioner Remy seconded that motion recommending that the motion indicate that staff put together some language which would emphasize the importance, and requirement perhaps, of a paper trail in addition to any affidavits or verbal testimony.

Commissioner Blair accepted the amendment to the motion.

Chairman Randolph asked for any further discussion of the motion.

There was none.

The motion failed with a 2-2 vote. Chairman Randolph and Commissioner Downey voted Nay and Commissioners Blair and Remy voted Aye.



Chairman Randolph stated that there is a provision for reconsideration.

Mr. Pirayou asked if something must be submitted for reconsideration.

Chairman Randolph replied that the petition does not have to be on the record.

Mr. Pirayou asked that a new draft opinion be crafted to include Commissioner Remy's paper trail language suggestions and the petition for reconsideration, and that it be scheduled for the May hearing.

Ms. Menchaca said that the pertinent regulation 18326 indicates that Commission may grant a petition for rehearing, however, there does not seem to be a provision addressing whether there is reconsideration of this opinion in the regulation.

Mr. Pirayou responded that there did appear to be a provision for reconsideration but that it was not clear if it needed to be on the record.

Ms. Menchaca said that the provision does say that any petition would be made in writing. Staff would recommend that the petition be made in writing so that it can be determined whether the regulations actually provide a vehicle for requesting consideration of a denial.

Chairman Randolph read from the regulation, "Within 14 days after the adoption of a formal opinion, the person who submitted an opinion request may petition the Commission to grant a rehearing."

Ms. Menchaca stated that there is no adoption here.

Mr. Pirayou suggested that the Commissioners have the ability to continue the hearing for the next Commission hearing so that the full Commission can decide on this issue. After the months of time and effort, it would be unfortunate to not have a full Commission that decided not to adopt this opinion and not have a reconsideration option. If the Commission would be open to having that reheard at the next Commission hearing so that the full Commission can decide on the opinion with the paper trail concept included in it.

Ms. Menchaca stated that staff would disagree with the request to rehear due to the particular regulation providing a vehicle for a Commissioner or Executive Director to make such a request, not the actual requestor.

Commission Blair informed the Chair that he would make the motion as a Commissioner to rehear this case. It would be unfortunate for this case to lose on a tie. If it is to be defeated, it should be done with a serious vote rather than a tie.

Chairman Randolph confirmed that the request being made is to agendaize the item for request reconsideration in May.

Commissioner Blair affirmed that the motion is to rehear the case in May.

Commissioner Remy seconded the motion which passed with a 3-1 vote.

Mr. Pirayou asked if the motion included adding the paper trail language in a new draft for the May meeting.

Chairman Randolph said that there is no reason that the language cannot be added at the next meeting.

Commissioner Blair expressed interest in hearing what staff would recommend in terminology that would assuage the Commission's concerns of adopting an opinion that could be used in later cases.

Chairman Randolph replied that Commissioner Remy's request does not seem to be that broad. The request would be to have some extemporaneous proof from the actual time, rather than after the fact affidavits. It would be fairly easy to add a sentence like that to the opinion to say that the requestor must show proof that steps were taken at the time of the issue.

Commissioner Blair responded that it would be helpful to know recommendations staff would make as to how that sentence would read.

Ms. Menchaca stated that staff can draft the language and added that the Commission has thirty days following the adoption of an opinion to actually publish the opinion itself. Therefore, there is opportunity even after the decision has been made to work on the language.

Chairman Randolph noted that the regulation says that the time for the effective date of a decision can be shortened. Therefore, if the opinion were to be adopted the requestor would most likely ask that the effective date be shortened.

Mr. Pirayou said that the challenge is that if the opinion is adopted in May, the thirty days after in which the Commission can publish it would be past the election date, therefore, as long as upon adoption of the opinion the transfer can be made, that would be helpful.

Ms. Corbett added that there is a filing deadline is around May 20, 2006, therefore it would make sense, if there is going to be something complete, to have it before that date because if there is an attribution, it should be reflected in that public document. The Commission does have a process that is allowed for the transfer of these funds, notwithstanding what is decided here, where there is an opportunity to return funds and have them returned. That should be considered because it can take months to complete that process.

Commissioner Downey said that it is assumed that at this point Ms. Corbett has a list together of the addressed of the people who have contributed. If it is decided that attempted to retrieve that funds that was may be a better way to go, let the Commission know. Certainly some portion would be recovered.

Ms. Corbett responded that if that process seemed workable, this case would not be before the Commission.

Commissioner Downey agreed that the process of retrieving the funds through contributors would not work as well but it would be a alternative.

Chairman Randolph stated that another option if to have a telephonic special meeting in an attempt to resolve this matter sooner.

Ms. Menchaca replied that there is no prohibition on the Commission holding a special meeting provided that all the meeting notification requirements.

Chairman Randolph said that a special meeting will be considered.

Commissioner Remy asked for some guidance regarding the Commission's capabilities in the equity issue because it would be unfortunate to make a decision and find out at a later date that it was not in the Commission's power to have done so.

Ms. Menchaca suggested including a cover memorandum addressing that issue to be included with the new draft of the opinion.

Chairman Randolph replied that a cover memorandum would be helpful and that the Commissioners will review schedules and look at possible dates for a special meeting. Counsel will be in touch with the requestor on this matter.

### **Item #13. Prenotice Discussion of Proposed Amendments to Regulation 18537 — Contribution Limits and Application to Repaid Loans.**

Chris Espinosa, Executive Fellow, presented for prenotice discussion, proposed amendments to regulation 18537. The regulation attached to the memorandum that was sent out prior to the hearing was incorrect, the correct copy is available if needed. The changes in the language deal with the term election cycle, which is currently featured in all three subdivisions of this regulation, however, for purposes of this regulation is not defined. The Act currently provides that a loan and the forgiveness of a loan are both regarded as campaign contributions. As a result, the loan and the forgiveness of a loan may be counted as two contributions for purposes of contribution limits, when, in fact, both constitute only one contribution. Under current law, forgiven loans are accumulated with other contributions made during a calendar year for purposes of determining if an individual or entity has qualified as a committee and also for reporting purposes. Regulation 18537 provides a limited exception to this rule for loans subject to the Proposition 34 contribution limits if the forgiveness of the loan is within the same election cycle as the original loan. Under such circumstances the forgiveness of the loan is not considered an additional contribution, however, the term election cycle for the purposes of this requirement is not defined. To improve on the current language of regulation 18537, the first proposed regulatory amendment would add a new subdivision to state that this regulation is applicable to the contribution limits of chapter 5 of this title. This new subdivision is being

inserted to clearly state the limitations of this regulation. The other proposed amendments would delete the obsolete language of “election cycle,” which is in the three current subdivisions of this regulation and replace it with language that better conforms to current statutes. There are also some technical changes being proposed that seek to make the regulation more consistent with the current language and reporting requirements of the Act. In 2000, Proposition 34 was passed, which re-instituted campaign contribution limits on candidates for elective state office on a per election basis. In 2001, regulation 18537 was amended in the same meeting as 18 other regulations, to update the Government Code references with the Proposition 34 references. The election cycle language related to the special election limits of Proposition 73 was not removed. However, Proposition 34 defines “election cycle” as “the period of time commencing 90 days prior to an election and ending on the date of the election” and expressly limits its application to sections 85309 and 85500, which require state candidates and ballot measure committees to electronically report contributions they receive. Consequently, staff proposes the Commission delete the obsolete term “election cycle” (as used in Proposition 73 special elections) from this regulation, and replace it with language that conforms to changes that were brought about by the passage of Proposition 34.

Commissioner Downey asked if forgiven loans have to be reported by the committees.

Carla Wardlow, Chief of Technical Assistance, replied that the recipient of the loan has to disclose the forgiveness of the loan and if the lender is also a type of committee, the lender would also report it as well.

Commissioner Downey confirmed that when the loan comes in, it is reported as a contribution and then when that loan is forgiven, it is reported as a forgiveness. Therefore, the proposed amendment will eliminate need to report the same loan as another contribution when it is forgiven.

Ms. Wardlow replied that Commissioner Downey is correct. There are circumstances under which a loan forgiveness can count as a contribution. For example, for purposes of determining whether a committee qualifies as a major donor, staff’s advice has been that if a loan is made and forgiven during the same calendar year, which is the cumulative period for reporting, then it is not counted as two contributions. However, if a loan is made in one year and forgive it in the following calendar year, that does count toward the qualification as a major donor committee.

Chairman Randolph asked for any public comment.

There was none.

Chairman Randolph stated that this item will be set for adoption at the June Commission meeting.

**Item #14. Adoption of Proposed Amendments to Regulation 18537.1 - Carry Over of Contributions.**

Chris Espinosa, Executive Fellow, presented for adoption proposed amendments to Regulation 18537.1. These changes deal with two issues relating to the “carry over” of campaign contributions in a “subsequent election for the same elective state office.” These amendments are offered to clarify regulatory language reflecting the Commission’s interpretation of section 85317. By adopting these amendments, the Commission will be doing the following two things. The first amendment would explicitly state that “subsequent election for the same elective state office” also refers to: (1) the general election, which is subsequent to and connected to the primary election for which the funds were raised; or (2) the special general election, which is subsequent to and connected to the special primary election for which the funds were raised. The second amendment would be to add subdivision (d), which would allow the Commission to exclude from the “carry over” provision candidates who establish bank accounts for an election but do not file the necessary documents to appear on the election ballot. In this scenario, the candidate would not be able to carry over campaign funds, but may transfer with attribution pursuant to section 85306.

Staff received one public comment from Betty Ann Downing, of Kaufman Downing, concerning this proposal, which asked how regulation 18537.1 would treat a candidate who files all the proper documents to be placed on the ballot, but does not get enough signatures to be placed on the ballot or other problems occur that do not allow the potential candidate to get on the ballot. One way to remedy this issue would be to amend the language in proposed subdivision (d) so that it would now read “a candidate who establishes a campaign bank account for an election but does not file the necessary documents or otherwise fulfill the requirements to appear on the ballot in that election may not carry over campaign funds but may transfer with attribution, pursuant to Government Code Section 85306.” This language modification would clarify that the candidate in the aforementioned scenarios would not be able to carry over the campaign funds but may transfer the funds with attribution.

Staff also received a comment letter this morning from Diane Fishburn, of the Olsen Law Firm, in which it was suggested that “as required by the election code” should be included in subdivision (d), line 4, after the word “documents.” This would specify which documents need to be filed to appear on the ballot. This proposed language seems to be non-substantive and simply cross reference language. Staff does not oppose this amendment. Ms. Fishburn’s second comment concerns an ambiguity in the memorandum which might be read to allow “carry over” to committees established for other elected offices. “Carry over” still only applies to re-election to the same elective state office as specified by current rules.

Chairman Randolph said that it seems that in order to make the two proposed language changes fit together, it would make sense to say “but does not file the necessary documents or otherwise fulfill the requirements of the elections code to appear on the ballot.”

Mr. Espinosa agreed with the Chair’s proposed language.

Commissioner Downey wondered if the necessary documents are filed without enough signatures. If documents are filed that do not have the requisite number of signatures, have the necessary documents been filed? Although, the proposed language would close any question of that case.

Chairman Randolph said that the necessary documents could be filed with enough signatures and then have signatures invalidated.

Chairman Randolph asked for any public comment.

There was none.

Commissioner Downey moved to adopt Regulation 18537.1 with the proposed changes.

Commissioner Blair seconded the motion, which passed with a 4-0 vote.

#### **Item #15. Approval of the 2006 Campaign Manual Addendum.**

Chairman Randolph asked for any questions from the Commission.

There was none.

Chairman Randolph asked for any public comment.

There was none.

Commissioner Blair moved to approve the 2006 Campaign Manual Addendum.

Commissioner Downey seconded the motion, which passed with a 4-0 vote.

#### **Item #16. Legislative Report**

Mark Krausse, Executive Director, addressed the analysis on AB 2771. The author of the bill had a slate mailer organization in his district who complained that the cost of having to have a vendor do its online filing was too great and requested an exception. Current law says that when a slate mailer reaches \$50,000 in reportable payments either made or received, filing must be done electronically. This bill would make the qualification period a rolling one of three years instead of aggregation since 2000.

Chairman Randolph asked for any questions from the Commission.

There were none.

Chairman Randolph confirmed that the Commission was comfortable with supporting AB 2771.

Whitney Barazoto, Legislative Coordinator, presented the next bill, SB 1265, which would do two things. The bill would add Statement of Economic Interests (SEI) disclosure categories for reporting of each single source of income of over \$10,000 to a business entity in which the filer

has an ownership interest of 10% or more. The categories would range from \$10,000 to \$1 million or more and are to be put place where there currently are none. Currently, the name of the source is the only thing listed. Staff does not have any concerns with this provision.

Ms. Barazoto continued with the second part of SB 1265, which requires all elective state office candidates and incumbents to file SEI's electronically. This includes all of the seven state elective offices, as well as the legislature, the CalPERS board, the State Board of Equalization, and the Superintendent of Public Instruction. Currently there is no system for SEI filing online, and therefore, this would impose a huge cost on the Commission, estimated at approximately \$800,000 as an initial cost and an additional 10-20% of that initial cost as an ongoing annual cost. Staff is recommending an "opposed unless amended/support if amended" position.

Chairman Randolph asked for any questions from the Commission.

Commissioner Remy asked for clarification on SB 1757.

Mr. Krausse said that SB 1757 will be amended to provide Peace Officer status for the Commission investigators. There is a separate step to insure that the investigators get Peace Officer retirement, which would be helpful to the Commission regarding recruitment and retention, however that is a separate part of the process.

Commissioner Remy wondered if the Peace Officer status would require the Commission to need additional salary.

Mr. Krausse replied that the status would be a retirement benefit and would not require additional salary. It would increase the Commission's retirement contributions, however it would reduce the Social Security requirement. It would not be more than a 5% increase on salary. This was done at the Secretary of State's office in the past for their Elections Fraud Investigators and their Notary Fraud Investigators.

Commissioner Remy asked if the employees under the Peace Officer status would also be included in the same retirement plan as other Peace Officers.

Mr. Krausse explained that the employees would get 3% at age 55, as opposed to the standard benefit of 2% at age 55. That is a separate negotiation through the Department of Personnel Administration and this legislation would not establish that.

Chairman Randolph added that the legislation would allow for that to be established.

Commissioner Remy said that if the bill moves along it would be helpful to have some information on the costs of this legislation to the Commission.

Mr. Krausse said that can be done. One thing to add regarding the prior bill that is related to this issue in which that Commission had adjusted the reporting categories for AB 1391 is that staff has given feedback that the author has no objection to the changes. It looks as if the bill will be amended.

Ms. Barazoto added that AB 2776, which was discussed at the March meeting regarding disclosure for ballot measure advertisements, has been completely gutted and amended. That bill is now a mental health bill.

#### **Item #17. Executive Director's Report**

Mr. Krausse dispersed copies of Proposed Budget Augmentations for the Commission and explained that SB 1120 failed in the elections committee last week. The committees had various objections including that this should be happening in the budget process and not by legislation and there was concern for a statutory amount that could not be reduced because of the requirement in the Act that it further the purposes of the Act. The Commission's argument was that the original Act had \$1 million that was indexed for inflation, there has been considerable increase in enforcement workload and other workload, in addition to statutory overlays of new requirements that the legislature has constantly put on the Commission without additional funding. The Commission is simply trying to get back to a base that actually funds the workload.

Mr. Krausse explained that the information on the handout shows the positions that are already proposed in the Governor's budget. The Commission would be getting fourteen positions if the Governor's budget as proposed in January is enacted and no reduction is anticipated. There are 24 additional positions that would come with SB 1120. The planned distribution for those positions in each division is shown as well as articulation of a reduction in time to closure in the Enforcement Division and an increase in the number of cases. SB 1120 fits very nicely with the Commission's Strategic Plan. The funding would not be supplied until July of 2007.

Commissioner Remy noted that there were no increases on the Administrative side of the Commission and wondered if there would be a burden because of that.

Mr. Krausse replied that the Staff Services Analyst (SSA) position is the entry level professional position in state service and that one position would give the Commission's sole personnel officer and the sole budget officer a backup. The support of that SSA position would go a long way.

Chairman Randolph asked how many employees are currently in the Administration Division.

Mr. Krausse answered that there are seven employees, including one half-time annuitant.

Chairman Randolph said that it is also important to note that each division will get more administrative support within each division with the additional legal secretaries and technical assistants.

Mr. Krausse said that support is very tight right now, in fact tomorrow when several people are on either off or have sicknesses, the Commission Assistant covers the front desk in reception.



Resources throughout the agency are being loaned between divisions in order to cover all of the needs.

**Item #18. Litigation Report.**

Luisa Menchaca reported that there was nothing to add to the written report.

Chairman Randolph said that would be no closed session.

The meeting adjourned at 11:22 a.m.

Dated: April 13, 2006

Respectfully submitted,

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Kelly Nelson  
Commission Assistant

Approved by:

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Liane Randolph  
Chairman